IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-84

JEROME F. MILES AND BERNICE MOORE, ET AL.,
Petitioners,

v.

THE PULLMAN COMPANY, ET AL., Respondents

BRIEF FOR RESPONDENT UNION IN OPPOSITION

QUESTIONS PRESENTED

The questions presented for review as concerns the respondent Brotherhood are whether the court below erred in failing to find an abuse of discretion by the District Court in dismissing the cause for want of prosecution, or erred in finding that petitioners' complaint failed to allege a valid claim for relief against the Brotherhood.

STATEMENT OF THE CASE

The cause was dismissed by the District Court as it applied to the respondent Union, Brotherhood of Sleeping Car Porters (respondent Union or Brotherhood) for want of prosecution by the petitioners. The court

below found no abuse of discretion in such ruling in view of petitioners' defaults in regard to depositions and interrogatories, and their failure to appear for trial (App. pp. 5-6).[1]

The court below further found that the complaint failed to state a claim for relief against the Brotherhood, in that it did not show that the petitioners resorted either to internal union remedies or to the statutory remedies provided by Section 3 of the Railway Labor Act, 45 U.S.C. 153, or that petitioners sought and were denied the Brotherhood's services and assistance in processing any claim on their behalf.[2]

ARGUMENT

The decision below is clearly correct, and presents no question of federal law such as to justify granting the writ and review by this Court.

Contrary to the contentions of the petitioners, the decision below is not in conflict with *Glover*[3], and *Czosek*[4], or with any other relevant legal authority relied upon by petitioners.

The petitioners are shown to contend that they were unlawfully deprived of the benefits of a collective bar-

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[1] Reference is to the Order of the court below printed as an appendix to the petition.

[2] The record before the court below contained the affidavits of Brotherhood officers, the deposition of a Pullman official, and the depositions of certain former Pullman porters who were contended to be part of the class allegedly represented by petitioners, and exhibits supporting such affidavits and depositions, furnishing facts relevant and material to the allegations of petitioners' complaint, and in support of the Brotherhood's motion for summary judgment.

[3] *Glover* v. *St. Louis-San Francisco R. Co.*, 393 U.S. 324.

[4] *Czosek* v. *O'Mara*, 397 U.S. 25.

gaining agreement negotiated by the respondents on May 27, 1968 (Pet. p. 3). Petitioners' contention is based upon the allegation that a "private, secret, side-letter agreement" between respondents, "of which plaintiffs were kept ignorant", was "designed to qualify and restrict the severance pay benefits promised" in the basic agreement executed by respondents on the same day (Pet. p. 4). The execution of the side letter (of understanding) by respondents constitutes the substance of petitioners' charge that the respondents "colluded and conspired" to deprive petitioners of separation allowances alleged to be payable to them, and for the collusory contention that the respondent Pullman Company breached the basic agreement, and that the Brotherhood breached its duty of fair representation owed to petitioners.

The court below characterized the letter of understanding as an interpretation (by the parties) of the basic agreement executed the same date, and noted aptly that the basic agreement provided that "any dispute involving the interpretation of any terms of that agreement" could be submitted for final and binding arbitration in accordance with the provisions of the Railway Labor Act.[5] *Andrews* v. *Louisville & Nashville Railroad Co.*, 406 U.S. 320, 324.

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[5] The record before the court below included facts disclosing that the basic agreement and the letter of understanding were executed by officials of the respondents on the same date before a mediator appointed by the National Mediation Board, and submitted to the mediator for filing with the Board. The Executive Secretary of the Board filed an affidavit stating that the basic agreement and letter of understanding were promptly filed with the Board.

The record below contained also copies of essentially identical agreements and letters of understanding executed by Pullman with the collective bargaining representatives of other of its employees, the testimony by deposition of a Pullman official that copies of the

Petitioners' complaint (App. pp. 8-19) does not include any allegation that petitioners requested the Brotherhood's assistance in the processing of a claim for a separation allowance under the agreement. Absent such a request, the Brotherhood could not act for petitioners since the Railway Labor Act provides that an employee, such as each of petitioners, has the sole and exclusive right to designate his representative in processing a claim arising out of a dispute involving the interpretation and application of the terms of a collective agreement. *Elgin, Joliet & Eastern R. Co.*, 325 U.S. 711.[6]

The rulings in *Glover* and *Czosek, supra,* are clearly not relevant or material to the instant dispute. The District Court did not dismiss petitioners' complaint against the Brotherhood for lack of jurisdiction, but for want of prosecution, and that was the order affirmed by the court below.[7]

Whereas, the court below could have properly granted the Brotherhood's motion for summary judgment on the basis of its analysis of the record, its failure to

basic agreement and letter of understanding were distributed to each of petitioners; and the testimony by the depositions of former Pullman porters alleged to be part of the class represented by petitioners that each received a copy of the basic agreement and letter of understanding.

[6] Conversely, some seventeen (17) other former Pullman porters, not included as petitioners, did request the Brotherhood to file claims in their behalf, and such claims were processed through arbitration by the Brotherhood.

[7] A motion for summary judgment filed by the Brotherhood conceded that the District Court had jurisdiction to entertain the action against the Brotherhood for the alleged breach of its duty of fair representation, but urged that the material facts relevant to the dispute as to which there was no dispute, clearly showed that petitioners had failed to state a claim entitled to relief.

do so does not require this Court to disturb the judgment below, which is manifestly correct in its terms, and an appropriate resolution of the dispute.[8]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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September 3, 1974

Certificate of Service

I certify that service of this brief was made this day by the mailing, postage prepaid, of three (3) copies thereof to counsel for each party of record.

EDWARD J. HICKEY, JR.

September 3, 1974

[8] See *Montana-Dakota Utilities Co.* v. *Northwestern Public Service*, 341 U.S. 246, 249-250; *S.E.C.* v. *Chenery*, 318 U.S. 80, 88; *J. E. Riley Invest. Co.* v. *Commissioner of Int. Rev.*, 311 U.S. 55, 59; *Helvering* v. *Gowan*, 302 U.S. 238, 245-246.